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Attorneys for Defendant and Counterclaimant
11 LIBERTY MUTUAL FIRE INSURANCE COMPANY

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 LARGO CONCRETE, INC., a California
15 Corporation; N.M.N. CONSTRUCTION,
INC., a California Corporation,

16 Plaintiffs,

17 v.

18 LIBERTY MUTUAL FIRE INSURANCE
19 COMPANY, a Massachusetts Corporation,
and DOES 1 through 100, inclusive,

20 Defendants.
21

22 AND RELATED COUNTERCLAIM
23

Case No. C07-04651 CRB (ADR)

Hon. Charles R. Breyer
[Complaint Filed: September 10, 2007]

**OPPOSITION TO PLAINTIFFS' EX
PARTE APPLICATION FOR A STAY
PENDING DISPOSITION OF PETITION
FOR WRIT OF MANDAMUS AND FOR
RULINGS ON OBJECTIONS TO
EVIDENCE**

24 Plaintiffs' *ex parte* application - - for a stay pending a yet-to-be-filed
25 mandamus petition and for rulings on objections made to evidence submitted with a matter
26 heard six weeks ago - - is unauthorized by statute, rule or order, and unwarranted by any
27 circumstance requiring immediate relief. It should be denied.
28

1 **A. Introduction**

2
3 This Court heard Liberty Mutual's motion to disqualify plaintiffs' counsel on
4 December 21, 2007, signed an order granting the motion on December 31, 2007 and
5 entered its order on January 2, 2008. Four weeks passed, and plaintiffs did nothing, other
6 than stipulate with Liberty Mutual to continue the case management conference date and
7 related deadlines. On January 29, 2008, plaintiffs' counsel gave notice that it would file an
8 *ex parte* application for a stay pending interlocutory appellate proceedings that plaintiffs
9 have not yet initiated. Later that day, plaintiffs e-mailed its application which, in addition
10 to seeking a stay pending disposition of an apparently planned petition for a writ of
11 mandamus, applies *ex parte* for rulings on objections that plaintiffs asserted to some of the
12 evidence supporting the disqualification motion heard on December 21, 2007.

13
14 Plaintiffs do not suggest that any emergency requires this Court's immediate
15 attention. They do not explain their four weeks of inaction following the Court's January
16 2, 2008 entry of the disqualification order, or offer any reason why they did not proceed by
17 noticed motion under Local Rule 7-2(a). No statute, rule or standing order authorizes the
18 requested *ex parte* relief under the circumstances presented here. Plaintiffs cite paragraph
19 4 of this Court's Standing Order, but do not even attempt to explain why it applies here,
20 why they failed to seek a stipulation for any part of the relief they now request, or why
21 such a stipulation was "not possible." Their *ex parte* application is procedurally defective
22 and lacks merit, and should be denied.

23
24 Plaintiffs' *ex parte* application also lacks substantive merit. Plaintiffs
25 acknowledge that their request for a stay requires them to demonstrate a probability that
26 they will succeed on the merits of their writ petition. Yet, since plaintiffs have not yet
27 filed their petition, this Court has nothing to review but its own order, and is in no position
28 to determine whether plaintiffs' theoretical petition has merit. Plaintiffs acknowledge that

1 the fundamental elements of mandamus relief require them to show "clear error" by this
2 Court, or that the order involved an issue of first impression. As briefly set forth below,
3 plaintiffs have not met their burden, and there is no basis whatsoever for this Court to
4 second-guess its January 2, 2008 Order at plaintiffs' *ex parte* invitation. If plaintiffs want a
5 stay, they should file their petition for a writ and ask the Court of Appeal to determine
6 whether it has sufficient merit to warrant the issuance of a stay.

7
8 Plaintiffs' other *ex parte* request - - for rulings on objections made to
9 evidence submitted with a motion heard six weeks ago - - is not authorized under the Local
10 Rules or this Court's Standing Order, and should be denied on this ground alone.
11 However, if for any reason the Court is inclined to consider plaintiffs' request, then Liberty
12 Mutual asks that the Court (a) review Liberty Mutual's opposition to plaintiffs' objections
13 [a copy is attached as Exhibit A], which demonstrates that the plaintiffs' objections lack
14 merit and should be overruled, and (b) review and rule upon Liberty Mutual's Objections
15 to the evidence submitted by plaintiffs.

16
17 B. **Ex Parte Relief is Unauthorized and Unwarranted**

18
19 Under the Local Rules, all motions must be filed and served on 35 days
20 written notice "except as otherwise ordered or permitted by the assigned Judge or these
21 Local Rules." [Local Rule 7-2(a)]. A party may file an *ex parte* motion "only if a statute,
22 Federal Rule, local rule or Standing Order authorizes the filing of an *ex parte* motion in the
23 circumstances and the party has complied with the applicable provisions allowing the party
24 to approach the Court on an *ex parte* basis." [Local Rule 7-10]. A party moving *ex parte*
25 must "include a citation to the statute, rule or order which permits the use of an *ex parte*
26 motion to obtain the relief sought." [*Id.*]

1 Here, citing only paragraph 4 of this Court's Standing Order as support for
2 their use of *ex parte* procedures, plaintiffs make two requests: (a) a stay pending
3 disposition of a writ petition that they have not yet filed, and (b) rulings on objections
4 made to evidence submitted prior to the December 21, 2007 hearing of Liberty Mutual's
5 motion to disqualify plaintiffs' counsel.

6
7 Neither of plaintiffs' requests should be granted *ex parte*. Considering them
8 in reverse order, this Court's Standing Order does not permit the use of *ex parte* procedures
9 to seek rulings on objections to evidence. The Standing Order applies *only* to requests for
10 continuances, special status conference requests, briefing schedules, and "other procedural
11 changes." It provides no basis whatsoever for seeking rulings on evidence *ex parte*.
12 Plaintiffs' *ex parte* application for rulings on evidence, relating to a motion heard six weeks
13 ago, is unauthorized and should be denied.

14
15 Plaintiffs' *ex parte* application for a stay should also be denied. First, under
16 paragraph 4 of the Standing Order, plaintiffs cannot show that obtaining a stipulation for a
17 stay pending interlocutory appellate proceedings was "not possible." There is no evidence
18 that plaintiffs' counsel ever asked for a stipulation, or that they ever discussed the topic
19 with Liberty Mutual's counsel, and hence, plaintiffs have not shown and cannot show that
20 their *ex parte* application is necessary. Moreover, while plaintiffs argue that this Court
21 should stay further proceedings "pending disposition of Largo's Petition for Writ of
22 Mandamus," they have neither filed a writ petition nor indicated when, if ever, they intend
23 to do so. Even if the Court is inclined to issue a stay while pending the completion of
24 interlocutory appellate proceedings, it should not do so without imposing on plaintiffs a
25 reasonable deadline for filing their appellate petition.

C. **Plaintiffs Have Not Met and Cannot Meet their Burden of Demonstrating Entitlement to a Stay Pending the Outcome of Interlocutory Appellate Proceedings**

Plaintiffs contend that a stay is warranted because they are "likely to succeed on the merits" of their planned petition for a writ of mandamus. In so doing, plaintiffs ignore "the starting point" of mandamus evaluations under Bauman v. United States District Court, 557 F.2d 650 (1977): "The remedy of mandamus is a drastic one, to be involved only in extraordinary situations." Id., at 654, quoting Kerr v. United States District Court, 426 U.S. 394, 402 (1976); see also Cole v. United States District Court, 366 F.3d 813, 818 (9th Cir. 2004)(mandamus is an "extraordinary remedy which should be sparingly employed".) Plaintiffs argue that they are "likely to succeed on the merits," heavily discounting the Bauman courts' guideline that mandamus should issue only when "the district court's order is clearly erroneous as a matter of law," 557 F.2d at 654, and its analysis of four prior Ninth Circuit decisions in which mandamus was granted, all involving district court decisions that it characterized as "quite clearly erroneous," "clearly erroneous," "both novel and not authorized by any rule," or "clearly wrong." Id., at p. 655.

While a showing of "clear error" may not always be necessary under Bauman, "absence of clear error is often dispositive" of a mandamus petition, and is "highly significant." Cole, supra, 366 F.3d at 820.

Here, plaintiffs' contend that this Court committed "clear error" by "failing to apply the modified substantial interest test" in deciding the defendant's motion to disqualify plaintiffs' counsel. Plaintiffs' contention is entirely misplaced. As this Court found, solidly relying on Adams v. Aerojet-General Corp., 86 Cal.App.4th 1324 (2001) and Ochoa v. Fordel, 146 Cal.App.4th 898 (2007), the modified substantial interest test applies "only when the lawyer with the alleged conflict never provided any legal services to the

1 client in a substantially related matter or otherwise." [January 2, 2008 Order, p. 5, lines
2 18-19.] The legal services that Mr. Pynes performed for plaintiff and its affiliates
3 compelled the Court's determination, under California law, that the "traditional substantial
4 interest test" applied. That determination cannot reasonably be characterized as "clearly
5 erroneous," because it was, in fact, clearly correct.

6
7 Plaintiffs also contend that California law is "trending" toward acceptance of
8 ethical walls as shields against otherwise illegal conflicts of interest, and therefore argue,
9 citing another Bauman factor, that this Court's order raises "important problems or issues
10 of first impression" that should be addressed on mandamus. Plaintiffs are wrong, because
11 there is nothing new here, for either this Court or the Ninth Circuit to address. As this
12 Court pointed out in Hitachi, Ltd. v. Tatung Co., 419 F.Supp.2d 1158 (N.D. Cal. 2006),
13 California rejects ethical walls. Moreover, as the Court noted in its January 2, 2008 Order,

14
15 "plaintiffs do not cite any case decided since Hitachi that casts doubt on this
16 holding; to the contrary, since the Court's opinion the California Supreme
17 Court has again rejected an ethical wall, albeit in the context of the San
18 Francisco City Attorney. City and County of San Francisco v. Cobra
19 Solutions, 38 Cal.4th 839 (2006)." [January 2, 2008 Order, p. 7, lines 6-10.]

20
21 In summary, while this *ex parte* proceeding is not the place to fully brief
22 plaintiffs' petition for a writ of mandamus, it is more than clear that plaintiffs' will not be
23 able to demonstrate "clear error" in the Court's Disqualification Order, or that this Court
24 ploughed new ground when it issued that order. If plaintiffs desire a stay, they should file
25 their writ petition and ask the Court of Appeal for stay, allowing the Ninth Circuit to
26 determine whether plaintiffs' writ petition has sufficient merit to warrant a stay.

1 D. **There Is No Basis Whatsoever for Plaintiffs' Ex Parte Request for Rulings on**
2 **Objections to Evidence**

3
4 In essence, plaintiffs have asked this Court to "clean up the record," before
5 they file their writ petition, by issuing specific rulings on the evidence supporting
6 plaintiffs' disqualification motion. Plaintiffs cite no authority supporting their request;
7 they merely re-state the objections they previously filed.

8
9 If for any reason the Court is inclined to grant plaintiffs' unsupported request,
10 Liberty Mutual requests two things. First, Liberty Mutual asks the Court to consider
11 Liberty Mutual's opposition to plaintiffs' objections [Exhibit A], which demonstrate that
12 plaintiffs objections lack merit and should be denied. Second, Liberty Mutual asks that the
13 Court *also* rule on *Liberty Mutual's* objections to the evidence submitted by plaintiffs in
14 opposition to the disqualification motion. [Exhibit B]


15
16 E. **Conclusion**

17
18 For all of the foregoing reasons, defendant respectfully asks that this Court
19 deny plaintiffs' *ex parte* application.

20
21 Dated: January 30, 2008

22 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

23
24 By


25 JAMES F. McSHANE

26 Attorneys for Defendant and Counterclaimant
27 LIBERTY MUTUAL FIRE INSURANCE COMPANY
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and DOES 1 through 100, inclusive.

20 Defendants.

21 AND RELATED COUNTERCLAIM
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Case No. C07-04651 CRB (ADR)

Hon. Charles R. Breyer

[Complaint Filed: September 10, 2007]

**LIBERTY MUTUAL FIRE INSURANCE
COMPANY'S OPPOSITION TO
PLAINTIFFS' OBJECTIONS TO
EVIDENCE SUBMITTED IN SUPPORT
OF MOTION TO DISQUALIFY
ROXBOROUGH, POMERANCE & NYE**

Date: December 21, 2007

Time: 10:00 a.m.

Place: Courtroom 8

23 Defendant and counterclaimant Liberty Mutual Fire Insurance Company

24 ("LMFIC") submits this opposition to the purported objections made by plaintiff Largo Concrete,
25 Inc. and plaintiff and counter-defendant N.M.N. Construction, Inc. (collectively "Plaintiffs") to the
26 evidence supporting LMFIC's Motion to Disqualify Roxborough, Pomerance & Nye from
27 Representing Plaintiffs.
28

1 Plaintiffs' purported objections to LMFIC's evidence are not really objections at all.
2 Rather than stating proper objections under the Rules of Evidence and the legal grounds
3 supporting them, plaintiffs assert additional legal argument, in violation of the 25 page limit on
4 points and authorities [Local Rule 7-3(a)]. Plaintiffs' thinly disguised effort to use purported
5 "objections" as an opportunity for further briefing is improper. Their "objections" should be
6 overruled in their entirety.

7
8 I.

9 **THE COURT SHOULD OVERRULE PLAINTIFFS' OBJECTIONS TO**
10 **THE LISA HANSEN DECLARATION**
11

12 Plaintiffs argue that the Declaration of Lisa Kralik Hansen is "irrelevant, based on
13 speculation, . . . is inherently weak, and is not the best evidence available" [Objections, p. 1], but
14 fail to specify any statement she made that is allegedly irrelevant, based on speculation, inherently
15 weak, or not the "best evidence." [See Objections, pp. 1-3]. The Court should summarily overrule
16 these objections Because Plaintiffs fail to identify the basis for them. Fed. R. Evid. 103.

17
18 Plaintiffs argue that certain statements in the Hansen Declaration are "misleading"
19 because they lack specificity on irrelevant issues. "Misleading" is not an evidentiary objection, it
20 is pure argument that should be reserved for the briefs.

21
22 Plaintiffs next argue that Ms. Hansen "falsely" asserted that she represented a
23 Liberty Mutual entity. Plaintiffs are wrong as a matter of law. Ms. Hansen properly stated that
24 she represented the Liberty Mutual companies in the Tony's Fine Foods matter based on the fact
25 that she worked at Kern and Wooley LLP ("K&W"). Streit v. Covington & Crowe, 82
26 Cal.App.4th 441, 445 (2000)(an attorney-client relationship exists between the client and any
27 attorney that is a partner of or employed by the retained attorney).
28

1 Plaintiffs argue that paragraphs 6 and 7 of the Hansen Declaration should be
2 stricken because they are based on hearsay statements by Ms. Yee. [Objections, p. 2]. This
3 argument is irrelevant because the alleged hearsay declarant, Ms. Yee, testifies to the same facts in
4 her declaration. [Yee Decl., ¶ 5]. Therefore, facts regarding Mr. Pynes's work on the Tony's Fine
5 Foods matter, whether attested to by Ms. Hansen or Ms. Yee, are competent evidence that the
6 Court should consider in ruling on this Motion.

7
8 Plaintiffs falsely claim that Ms. Hansen stated in her declaration that she "trained"
9 or "supervised" Mr. Pynes on the Tony's Fine Foods matter. [Objections, p. 3]. In fact,
10 Ms. Hansen stated that she often supervised Mr. Pynes' work at K&W and that she discussed Mr.
11 Pynes's work on the Tony's Fine Foods matter with him. [Hansen Decl., ¶¶ 3, 7].

12
13 Finally, Plaintiffs argue that Ms. Hansen's entire declaration should be "stricken"
14 because she "has demonstrated extreme bias in favor of Liberty" because Liberty Mutual has not
15 retained her in any new cases during the last 11 months. (Objections, p. 3). Plaintiffs' objection is
16 factually and logically unsupported, as Ms. Hansen's bias, if any, could as easily be *against*
17 Liberty Mutual for not hiring her as in favor of Liberty Mutual because she wants future business.
18 Plaintiffs merely presume the latter, citing nothing in support. In any event, alleged bias is not a
19 proper grounds for excluding otherwise admissible witness statements. DiCarlo v. Keller Ladders,
20 Inc., 211 F.3d 465, 468 (8th Cir. 2000) (bias goes to the weight of the evidence, not its
21 admissibility); accord Estate of Russell, 189 Cal. 759, 769 (1922). Following Plaintiffs' dubious
22 logic that a declaration should be stricken due to witness bias, the Court should strike the
23 declarations of Messrs. Pynes, Roxborough, Adreani and Phillips, whose biases, as opposing
24 counsel, are overwhelming.

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III.

CONCLUSION

For all of the foregoing reasons, the Court should overrule Plaintiffs' Objections in their entirety.

Dated: December 14, 2007

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By



FRANK FALZETTA

Attorneys for Defendant and Counterclaimant
LIBERTY MUTUAL FIRE
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24 AND RELATED COUNTERCLAIM
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Case No. C07-04651 CRB (ADR)

Hon. Charles R. Breyer
[Complaint Filed: September 10, 2007]

**[PROPOSED] ORDER ON LIBERTY
MUTUAL FIRE INSURANCE
COMPANY'S OBJECTIONS TO THE
DECLARATIONS SUBMITTED IN
SUPPORT OF PLAINTIFFS'
OPPOSITION TO LIBERTY MUTUAL'S
MOTION TO DISQUALIFY THE
ROXBOROUGH FIRM**

Date: December 21, 2007
Time: 10:00 a.m.
Place: Courtroom 8

<u>Portion of Declaration</u>	<u>Objections</u>	<u>Ruling</u>
(Roxborough Decl., p. 10:18-20.)		
<p>11. In addition, I have reviewed the pleadings identified on this docket sheet and determined that neither Ms. Yee nor Lisa Kralik Hansen's name appear on any of the listed pleadings and the only pleading executed by Ms. Hansen was the Notice of Ex Parte Application and Ex Parte Application for an Order Staying the Action by Stipulation. Although this document was executed by Ms. Hansen, her name does not appear as attorney of record; it appears she executed the pleading simply on behalf of Susan Olson.</p> <p>(Roxborough Decl., pp. 11:1-6.)</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p> <p>Hearsay. Fed. R. Evid. 802.</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p> <p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>

<u>Portion of Declaration</u>	<u>Objections</u>	<u>Ruling</u>
<p>1 <i>Kimco</i> indicate that all of the</p> <p>2 documents Liberty Fire considered</p> <p>3 its training and adjusting "manuals"</p> <p>4 were produced to me, and Bates</p> <p>5 labeled Nos. LM 50869-5 1987.</p> <p>6 (Adreani Decl., p. 5:2-4.)</p>	<p>Hearsay. Fed. R. Evid. 802.</p>	<p><input type="checkbox"/> Sustained</p> <p><input type="checkbox"/> Overruled</p>
<p>9 6. I also specifically recall</p> <p>10 Liberty Fire's counsel</p> <p>11 acknowledging to me on the record</p> <p>12 of a deposition that, with regard to</p> <p>13 workers' compensation training and</p> <p>14 adjusting manuals used by Liberty</p> <p>15 Fire, "all such documents had been</p> <p>16 produced" in the <i>Kimco</i> case.</p> <p>17 (Adreani Decl., p. 5:6-9.)</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p> <p>Hearsay. Fed. R. Evid. 802.</p>	<p><input type="checkbox"/> Sustained</p> <p><input type="checkbox"/> Overruled</p> <p><input type="checkbox"/> Sustained</p> <p><input type="checkbox"/> Overruled</p>
<p>19 7. It was well known to Ms.</p> <p>20 Hansen and Ms. Olson that Mr.</p> <p>21 Pynes was working at my firm at the</p> <p>22 time the <i>RemedyTemp</i> case was</p> <p>23 filed.</p> <p>24 (Adreani Decl., p. 6:1-2.)</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p>	<p><input type="checkbox"/> Sustained</p> <p><input type="checkbox"/> Overruled</p>
<p>26 8. On one occasion, early in the</p> <p>27 case at an in person "meet and</p> <p>28</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p> <p>Hearsay. Fed. R. Evid. 802.</p>	<p><input type="checkbox"/> Sustained</p> <p><input type="checkbox"/> Overruled</p> <p><input type="checkbox"/> Sustained</p> <p><input type="checkbox"/> Overruled</p>

1	<u>Portion of Declaration</u>	<u>Objections</u>	<u>Ruling</u>
2 3 4 5 6 7 8 9 10	confer" under Central District Local Rule 7 at my office, both Ms. Hansen and Ms. Olson said hello to Mr. Pynes personally while in my office. On other occasions both Ms. Hansen and Ms. Olson asked me to say hello to Mr. Pynes. (Adreani Decl., p. 6:5-8.)		
11 12 13 14 15 16 17 18 19 20	9. During the course of the <i>RemedyTemp</i> case, I have received through discovery and Rule 26 all of the same training and adjusting materials I received in the <i>Kimco</i> case, all with Liberty's full knowledge of Mr. Pynes' employment at my firm. (Adreani Decl., p. 6:9-14.)	Lacks foundation. Fed. R. Evid. 602.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
21 22 23 24 25 26 27 28	10. At that time, co-counsel in Kentucky had long since obtained all of the workers' compensation training and adjusting manuals, including Best Practices, from Liberty. These were all of the same documents I had seen in <i>Kimco</i> and	Lacks foundation. Fed. R. Evid. 602.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

<u>Portion of Declaration</u>	<u>Objections</u>	<u>Ruling</u>
RemedyTemp. (Adreani Decl., p. 8:1-5.)		

**LMFIC'S OBJECTIONS TO DECLARATION OF
CRAIG S. PYNES DATED NOVEMBER 30, 2007**

<u>Portion of Declaration</u>	<u>Objections</u>	<u>Ruling</u>
1. The claim files I reviewed contained no confidential information regarding Liberty Mutual Insurance Company or Liberty Mutual Fire Insurance Company and were individually titled "applicant's name versus Tony's Fine Foods". (Pynes Decl., p. 2:20-22.)	Lacks foundation. Fed. R. Evid. 602. Hearsay. Fed. R. Evid. 802. Improper legal conclusion. Fed. R. Evid. 701.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled <input type="checkbox"/> Sustained <input type="checkbox"/> Overruled <input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
2. At no time during my employment with Kern & Wooley did I ever seek or gain access to information that was confidential to Liberty Mutual Fire Insurance Company, or any other Liberty entity, regarding their policies or strategies associated with workers' compensation bad faith claims	Lacks foundation. Fed. R. Evid. 602. Improper legal conclusion. Fed. R. Evid. 701.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled <input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

<u>Portion of Declaration</u>	<u>Objections</u>	<u>Ruling</u>
<p>1 mishandling matters.</p> <p>2</p> <p>3 (Pynes Decl., p. 4:17-20.)</p> <p>4</p>		
<p>5 3. At no time during my</p> <p>6 employment with Kern & Wooley</p> <p>7 did I obtain any information that was</p> <p>8 confidential to Liberty Mutual Fire</p> <p>9 Insurance Company's, or any other</p> <p>10 Liberty entity, regarding their</p> <p>11 policies or strategies associated with</p> <p>12 workers' compensation bad faith</p> <p>13 claims mishandling litigation.</p> <p>14 (Pynes Decl., p. 4:21-24.)</p> <p>15</p>	<p>Lacks foundation. Fed. R. Evid. 602.</p> <p>Improper legal conclusion. Fed. R. Evid. 701.</p>	<p><input type="checkbox"/> Sustained</p> <p><input type="checkbox"/> Overruled</p> <p><input type="checkbox"/> Sustained</p> <p><input type="checkbox"/> Overruled</p>
<p>16 4. Before leaving Kern &</p> <p>17 Wooley, I personally discussed my</p> <p>18 offer to work for Roxborough,</p> <p>19 Pomerance & Nye with Lisa Kralik</p> <p>20 Hansen. We specifically discussed</p> <p>21 that the Roxborough, Pomerance &</p> <p>22 Nye firm handles workers'</p> <p>23 compensation bad faith claims cases</p> <p>24 distinct from the type of work I had</p> <p>25 done at Kern & Wooley. She agreed</p> <p>26 that this was a completely new area</p> <p>27 of practice for me and a wonderful</p> <p>28 opportunity for me to learn a</p>	<p>Hearsay. Fed. R. Evid. 802.</p>	<p><input type="checkbox"/> Sustained</p> <p><input type="checkbox"/> Overruled</p>

1 IT IS HEREBY ORDERED AND ADJUDGED that LMFC's evidentiary
2 objections are GRANTED as marked above.

3
4 IT IS SO ORDERED.

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6 Dated: December __, 2007

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8 THE HONORABLE CHARLES R. BREYER
9 UNITED STATES DISTRICT COURT JUDGE
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1 Respectfully Submitted by:

2 Dated: December 14, 2007

3 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

4
5 By



6 TED C. LINDQUIST, III

7 Attorneys for Defendant and Counterclaimant

8 LIBERTY MUTUAL FIRE

9 INSURANCE COMPANY